

October 31, 2011

Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551  
E-Mail: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

Re: Docket Number R-1429

Comments on Proposed Interim Final Rule on Section 239.8(d) of Regulation MM  
(Sent via e-mail with copy to follow by regular mail)

Dear Board Members:

I am writing this letter in response to the Board's proposed rule regarding the dividend waiver provisions relating to mutual holding companies ("MHCs"). I have been a financial consultant specializing in the thrift and banking industries for approximately 25 years and have been personally investing in the financial markets, including thrift stocks, for over 35 years. I am a licensed CPA and have an MBA in finance.

I strongly believe that the ability of MHCs to waive dividends in a manner that is free of undue restrictions and burdensome regulations is imperative to ensure the vitality of thrifts that elect to remain in the MHC structure or ultimately undertake a second step conversion. It appears that in its formulation of the interim final rule on dividend waivers, the Board misinterpreted the intent of the Dodd-Frank Act and the intended policies of the Office of Thrift Supervision relating to dividend waivers by MHCs.

Importantly, for well over 40 years, the federal regulations governing the mutual-to-stock conversion process and federal regulations that have governed the operation of thrift institutions recognize that the board of directors of a thrift organization have a fiduciary obligation to multiple stakeholders, i.e., employees, local customers, stockholders, as well as depositors. Three provisions in the interim final rule relating to an MHC director's fiduciary obligations appear to be particularly inconsistent with his or her expected responsibilities on behalf of the thrift institution's stakeholders:

1. The interim final rule that requires the MHC to obtain mutual members' approval for a waiver of dividends will add significant costs to the MHC and will result in a very time-consuming process. Also, many sophisticated investors, let alone depositors, are not familiar with the concept of MHC's and the rationale behind a dividend waiver. Submitting the dividend waiver to depositor vote will be adding an element of complexity that will be very difficult to explain to depositors and prove to be a counter-productive exercise. I believe that almost all depositors are being asked to vote on an issue that, in reality, they have no stake in. This is because there will be no financial impact to depositors unless in the future the MHC elects to undertake a second step conversion and depositors exercise their subscription rights to purchase stock. In most cases

depositors do not exercise their subscription rights (on average, 5% or less of depositors elect to purchase stock in the original MHC offering or the second step conversion offering).

2. Section 239.8(d) specifically requires an MHC board to disclose and mitigate conflicts of interest resulting from a board member's ownership in the subsidiary declaring a dividend. This proposed conflict of interest clause that would effectively discourage board members from investing in the stock of a thrift organization they govern would prove to be detrimental to the financial well-being of that organization. Further, and just as important, this proposed clause runs counter to a fundamental objective of public investors of a stock organization- a desire that board members and other management own a substantial equity interest in the company and thereby ensure that management's interests in the financial success of the company are aligned with theirs. Of course, the MHC board is subject to its fiduciary obligations to the company, including the depositors and shareholders, and any apparent "conflict of interest" is mitigated by the fact that no individual board member may secure a controlling stock interest in the company without prior regulatory approval.

It is important to note that from an organizational standpoint, there is an interdependency among the MHC, its mid-tier stock holding company and its operating thrift subsidiary. This interdependency is also true of the boards of each of these entities. In just about all cases, these various boards overlap. Therefore, the overall business and financial success of the entire thrift organization (including all its major stakeholders) is dependent on the boards and management teams of each entity agreeing on and achieving their common objectives.

3. Section 239.8(d) distinguishes between grandfathered MHCs (those that waived dividends prior to December 1, 2009) and non-grandfathered MHCs (those that did not waive dividends prior to December 1, 2009). In fact, more stringent standards are imposed on non-grandfathered MHCs. I believe that establishing this distinction is arbitrary and illogical. Non-grandfathered MHCs should be regulated the same as MHCs that are grandfathered. For example, directors of a non-grandfathered MHC with direct/indirect ownership, control or power to vote shares of a subsidiary declaring the dividend, or who otherwise directly or indirectly benefits through an associate from the waiver of dividends, must abstain from voting. Again, this is the type of provision that runs counter to the overall financial well-being of the entire thrift organization and all its stakeholders.

Finally, the implementation of overly burdensome dividend waiver restrictions could result in reduced capital at the subsidiary thrift level. The decision by an MHC's board not to waive dividends could be interpreted as a failure by the board to exercise its proper fiduciary obligations on behalf of other key stakeholders of the thrift organization. Conversely, by waiving dividends, more capital could be retained at the operating thrift level rather than being up-streamed to the MHC, which typically has no business purpose or ability to productively utilize the funds. Therefore, by being able to retain more capital at the operating thrift level, this will accrue to the benefit of employees (better compensation plans), depositors (higher interest rates on deposits) and other local bank customers (expanded loan originations as well as other banking products).

Michael Seiler

I am hopeful that the Board will consider the comments raised in this letter and implement less restrictive dividend waiver provisions that are more beneficial to the thrift industry and its various stakeholders.

Thank you for this opportunity to respond.

Sincerely,

Michael Seiler